

direct review. United States v. Sampson, 140 F.3d 585 (4th Cir. 1998). Petitioner filed a first Motion to Vacate under 28 U.S.C. § 2255 on April 5, 1999. Sampson v. United States, 3:99cv127 (W.D.N.C. 1999). This court dismissed that petition with prejudice on July 21, 2001. Id., Order (#21).

On June 15, 2015, based on a petition from petitioner's counsel, a state-court judge granted petitioner's Motion for Appropriate Relief, vacating one of the two prior convictions for assault on a female. Two weeks later, counsel filed petitioner's second Motion to Vacate, which is now before the court.

II. Claims Asserted in the Second Petition

In his petition, petitioner argues that his sentence should be vacated and he should now be resentenced because one-of-the-two convictions supporting his sentence as a career offender was vacated by the North Carolina General Court of Justice on or about June 15, 2015, and thereafter dismissed by the State of North Carolina. (Contention 1). In his Reply,¹ petitioner moves to supplement his original motion to add two additional, alternative grounds for relief (which the court has consecutively numbered):

- (2) his state convictions for assault on a female as "crimes of violence" are no longer crimes of violence pursuant to United States v. Vinson, No. 14-4078, --- F.3d ---, 2015 WL 6686001 (4th Cir. Nov. 3, 2015); and

¹ Counsel for petitioner is reminded that with the exception of dispositive motions contained in response to a complaint or petition, the Local Civil Rules prohibit inclusion of motions in responsive and reply briefs as there is no method for tracking such motions.

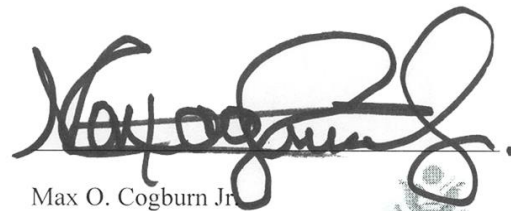
(3) that, to the extent the court finds either of his claims non-cognizable under 28 U.S.C. § 2255, the court construe the claims as applications for habeas relief pursuant to 28 U.S.C. § 2241.

The court will allow the addition/amendment of the petition and instruct the respondent to answer or otherwise respond to the petition as amended. As a matter of housekeeping, the respondent's Motion to Dismiss will be denied without prejudice as moot and the petitioner's Reply to the Motion to Dismiss will be terminated to avoid having to later piece arguments together. Respondent will be allowed 30 days within which to respond to the Amended Petition and petitioner shall have 14 days to file his Reply through counsel.

ORDER

IT IS, THEREFORE, ORDERED that petitioner's Motion to Supplement or Amend (#10) is ALLOWED, the petition is amended as herein provided, respondent's Motion to Dismiss (#7) is denied without prejudice as moot, the respondent is instructed to file an Amended Answer or Other Response to the Amended Petition within 30 days, and petitioner shall file his Reply within 14 days of the government filing its Amended Answer or Other Response.

Signed: January 8, 2016



Max O. Cogburn Jr.
United States District Judge